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ABSTRACT

The question of the viability of tenure for college faculty is considered in three papers. In "The History of Tenure," Walter P. Metzger considers the history of academic tenure and the history of opposition to this practice. It is concluded that tenure continues to be a vital institution and has provided a better quality faculty. Its important historical contribution has been to provide due process by peers for faculty threatened with dismissal. In order to provide tenured positions for junior faculty, it is proposed that higher education be exempt from the necessity of raising the retirement age to 70. In "The Poverty of Historicism: A Critique of Walter Metzger's Defense of Tenure," James O'Toole suggests that the disadvantages of tenure outweigh the advantages. Disadvantages include immobility or lack of career options for the tenured professor: the tendency to tenure individuals who do not give offense or make intellectual waves: the pressure to publish for its own sake: and putting power in the hands of senior faculty members to impose doctrinal orthodoxy on untenured junior faculty, thus restricting academic freedom. In "The Concept of Tenure and an Alternative," Penina M. Glazer describes how the contract system can work, based on the experience of Hampshire College, which has never had tenure and which does have multiple-year contracts. The following problems are noted: the time it takes to conduct periodic evaluations and how evaluations of senior faculty should differ from those of junior faculty. (SW)

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(6) TENURE

Walter P. Metzger
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American Association for Higher Education

The American Association for Higher Education

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The theme of the 1979 National Conference was "The Academic Workforce: Opportunities for Renewal." Some of the papers prepared for presentation at the conference were selected by a review committee for publication in the annual conference series, *Current Issues in Higher Education*. Many of the papers in this series focus on the quality of worklife in academe and ways to improve it. In some cases, the papers have been revised by their authors and therefore differ somewhat from the actual conference presentation. They have not, however, been extensively edited or revised, since the purpose of the series is to disseminate the conference presentations as rapidly as possible. Points of view and opinions reflected in this series are those of the authors, not the Association.

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Tenure

Introduction 1

The History of Tenure 3
By Walter P. Metzger

The Poverty of Historicism: A Critique of Walter Metzger's Defense of Tenure 13
By James O'Toole

The Concept of Tenure And an Alternative 15
Penina M. Glazer

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Introduction

Have the economic, social, and educational conditions changed sufficiently to permit the abolishment of tenure as a framework for faculty employment? The three authors who prepared the papers that follow in this monograph were asked this question.

To Walter Metzger, tenure continues to be a vital institution. Its important historical contribution has been to provide due process by peers for faculty threatened with dismissal. To those who say that tenure protects the incompetent, Metzger says that it doesn't have to do that. On balance, Metzger believes that tenure has provided a better quality faculty in higher education.

James O'Toole, a faculty member at the University of Southern California who turned down tenure, disagrees. Comparing tenure to the myth of man's superiority over woman, O'Toole builds the case that tenure tends to stultify human growth and safeguards the careers of mediocre faculty.

Both Metzger and O'Toole agree that ways must be found—with or without tenure—to make room for bright, younger scholars who cannot get tenure slots. Metzger would keep tenure but exempt higher education from the necessity of raising the retirement age to 70; O'Toole would substitute tenure with multiple-year contracts.

An institution that has never had tenure, and which does have multiple-year contracts, is Hampshire College. Penina Glazer, its Dean, describes how the contract system can work. Some of the fears voiced by Metzger have not been realized; other problems—such as the time that it takes to conduct rigorous periodic evaluations, and questions about how evaluations of senior faculty should differ from those of junior faculty, are raised.

The History of Tenure

By Walter P. Metzger

The current debate over academic tenure calls into question everything about it except its age. Among the usages of colleges and universities, academic tenure is commonly regarded as a latecomer, perhaps no older than the last period of academic expansion (when professors, in low supply, presumably could drive hard bargains), and certainly not older than the Great Depression (when professors, facing a hostile market, presumably sought to ensconce themselves in their jobs). But this common perception, I submit, is a common error: academic tenure was not a new concept in 1950 or 1930; indeed, it was hardly a new concept in 1330. In all the ages of academic man, efforts had been made to protect the realm of academic thought and teaching from the menacing world of wealth and power. And in all the ages of academic man, these efforts have produced, *inter alia*, a set of institutional rules and practices designed to shield the inhabitants of that realm from arbitrary, repressive or unjust evictions.

I call all these tutelary devices "tenure," but I do not mean to suggest that they were all of the same design. In the universities at Oxford, Cambridge, and Paris during the Middle Ages, these devices took the form of guild privileges and immunities that generally permitted the faculties to rule themselves. During the post-Reformation era on the Continent, they consisted of certain features of that older mini-sovereignty combined with the special status and security associated with membership in the higher civil service. In America, where professors were employees of academic governing boards, not members of self-governing corporations or high-ranking officers of the state, they were embodied in the terms of employment contracts that limited the exercise of the employer's will. Nor do I mean to imply that every past incarnation of the tenure principle gave maximum protection to academic freedom, however that term may be defined. No tenure scheme ever originated at full strength, with all its codes and mechanisms perfected; many came under severe attack and suffered breakdowns or circumventions. Every tenure scheme left a large or small portion of the faculty outside the charmed circle of its key protections: a cadre of apprentices still preparing for the mastership; a class of *privatdozenten* teaching for fees and awaiting chairs; a corps of assistant professors on probation hoping for promotion to securer ranks.

Nevertheless, one can detect amid all this flux and variety a number of fairly consistent themes. Anyone who takes pains to review this history will be impressed with the sheer longevity of the effort to safeguard the restlessness of academic intellect from the obedience norms of hierarchy and from the taming forces of purchase and command. One will also find a persistent inclination, at least on the part of western professoriates, to go beyond the protection afforded by external allies—a monarch well disposed to men of learning, a church jealous of its clergy's rights, a court reinterpreting a constitution in helpful ways. Aware that favors generously bestowed in one period may be capriciously retracted in another, academics have not rested content with the good will of kings and princes, popes and judges, but have sought to build their own defenses within the walls of their universities, whether these be modes of collegial governance, peer co-optive practices, or fair-dismissal rules. Finally, one is likely to be led to the broad conclusion that, while relatively strong, pervasive and inclusive tenure systems did not invariably produce academic golden ages (one thinks of slumbering Oxford and Cambridge in the eighteenth century); it was almost always the case that delimited, caste-like, or battered tenure systems were associated with universities in decline.

I do not cite the ancient pedigree of tenure in order to throttle the current debate over whether it should continue to exist. Justice Oliver Wendell Holmes once said that "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV." I would echo his desanctification of historic precedent: it would be unseemly to offer no better argument against generalized term appointments, the arrangement now put forward as a tenure substitute, than that they were tried and found wanting many years ago. But I do believe that a historical perspective may enlarge and clarify the terms of this debate.

Seen through the tunnel of here and now, every untoward side effect of tenure practice tends to look like an inherent defect of tenure principle.

The history of academic tenure is co-extensive with the history of the academic enterprise: to presume that academic tenure was born yesterday is to run the risk of dismissing it as a passing fad. What is more, the history of *opposition* to academic tenure is also long and resilient: to presume that the costs of this device were never reckoned until its critics learned the language of cost accounting is to commit the old semantic error of believing

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that new terms invent new things. Above all, a dogged, presentistic bias may well produce a want of poise. Seen through the tunnel of here and now, every untoward side effect of tenure practice tends to look like an inherent defect of tenure principle. Today, two such side effects—an inflation of salary costs that strains weakened academic budgets, and a protraction of the employment cycle that tends to clog the channels of professional opportunity—have aroused so much resentment in certain quarters that they touch off spirited movements to extirpate tenure root and branch. I do not claim that the record of the past gives express directions as to how tenure can be rendered less expensive without being made considerably more exclusive through the use of tenure quotas, tenureless posts, and part-time hirings, all of which threaten tenure in some degree. Nor do I claim that it precisely answers the conundrum of how younger scholars can be brought in large numbers into this profession when institutions eliminate tenured offices, and Congress, by extending the age of mandatory retirement, lengthens the period of tenured incumbency. We may have to consult our own ingenuity to cope with problems as particular as these. But I do believe that the record of the past, when read with care and imagination, may keep us from *over-reacting* to the laws and inconvenience of practique.

Generalized Term Appointments

At the end of the 19th century, a certain system of tenure emerged in this country, although in that Congo we were pleased to call an academic system, it cannot be said to have universally prevailed. In general, a faculty member was deemed to have acquired "tenure" when he was promoted to a high institutional rank (usually "full" professor) and had received an "indefinite" appointment—that is, one that did not bear the date of its demise. (Persons in lower ranks were on "term" appointments—that is, on appointments that would lapse after an indicated period unless they were affirmatively renewed). An "indefinite" appointment meant that the appointment would be continued in the absence of a decision to the contrary; it often meant that it would not be discontinued except for some serious dereliction—neglect of duty, moral turpitude—imputed to its recipient. It seldom meant that it would not be discontinued unless the recipient had been accused of an offense, the accusation had been weighed in a predismissal hearing, and the accuser had borne the burden of proof. And practically never did it mean that the colleagues of a threatened faculty member would be commissioned to serve as a campus tribunal to hear the accusation and judge its seriousness and veracity.

This might sound like no tenure at all to an ear conditioned to the current meanings of that term. At that time, however, an indefinite appointment was widely understood to represent a clear advance over the contractual arrangement that had first been put into effect at Harvard in the early eighteenth century, and that had been carried to a far extreme, mostly at public universities, in the early and middle decades of the nineteenth century. That arrangement had consisted of term appointments of rather short or very short duration for the whole of the faculty in being, a scheme that offered academics such a fugitive security that it came close to—if it did not actually reach—a denial of any kind of tenure right.

We are witnessing today a revival of interest in the generalized term appointment as a putative cure for the alleged defects of our current tenure system. Those who advocate the widespread use of renewable fixed-term contracts, or rolling contracts that successively advance the dates of their termination, or predesignated non-tenure positions for veteran, full-time officers of instruction, are following, whether they know it or not, a path first charted two hundred and fifty years ago. I believe that it would be better if they did know it: perhaps if they did, they would not claim to be so radically innovative, so unarguably up-to-datish, even if they publish in magazines called *Change!* I believe. too, that knowledge of the precedents of tenure, in addition to curbing their inclination to shout "Eureka!" every time they come upon this wheel, would offer them a needed education in the subtler implications of this "reform."

Current advocates of generalized term appointments believe that their singular aim and virtue is that they facilitate the removal of incompetents. But a glance at the Harvard action in the eighteenth century would tell them that only in part was it intended to let out the stale air and admit the new. According to the early statutes of that institution, one of the principal objectives of the rule that placed all instructors, then called tutors, on renewable three-year appointments was "to excite (them) from time to time to greater care and fidelity in their work." In other words, the Harvard faculty was to be improved, not so much by *acts* of removal, as by *threats* of removal—threats that the renewability of term appointments would allow the institution to repeat. Firmer discipline, not easier purgation, was the primary end in view.

Two assumptions were imbedded in these statutes, and they were to lie at the heart of the case for limited appointments whenever such case might be made. The first assumption was that a high degree of occupational insecurity is necessary to spur professors to do their utmost; the second assumption, a corollary of the first, was that a long vista of occupational security tempts professors to go slack. It is hard to believe that the durability of these assumptions derives from their confirmation in experience. Over the years, the impressionistic evidence gathered on this subject by academic witnesses and folklorists would seem at best to be inconclusive. For every tale of a "safe" professor gone to seed, there appears to exist a countervailing instance of a less secure professor full of fears, ready to toady to his superiors and reluctant to take mental risks. Nor do these assumptions gain significant support from what now passes as scientific evidence—surveys of faculty performance applied to representative samples and replete with statistical tests. The relatively few studies in this genre that test the impact of tenure on academics usually conclude that they do not become either more or less proficient when they rise from a less to a more secure position. Most studies do not test the association between tenuring and performing; they test the association between aging and performing, which is a related but different thing. (It is

easy enough to confuse the two, since a good part of current anti-tenurism is an expression of cultural gerontophobia, the belief that middle and older age are synonymous with physical deterioration and mental decay.) Nevertheless, even if one were to take the variable of seniority as a surrogate for the variable of security, one would find that the thrust of these findings does not substantiate any hard-nosed claims. In general, they show that the correlation between age and scholarly productivity varies according to field of knowledge, that the correlation between age and pedagogic flair is close to zero and that the correlation between age and such valued characteristics as leadership and administrative acumen is usually positive, sometimes strongly so. But these cullings from the survey literature are probably beside the point. The view that academics are motivated to their *qui vive* best by an overhanging threat of dismissal was formulated long before anyone engaged in multiple regressions or wrote books on academic work psychology; and it has shown, by its hardiness throughout the ages, a capacity to resist opposing facts. It is, in a word, an ideology—a natural, if not inevitable byproduct of a system in which professoriates are hired by boards of lay employers, can thus be readily identified with other work forces, and like other work forces seen properly exerted by market threats.

During the early and middle decades of the nineteenth century, it became a fairly common practice, especially in state-supported institutions of higher learning, to contract for faculty services a year, vacate all positions at the end of that period, and require previous incumbents to sue for reinstatement before the start of the new academic term. These reapplications were by no means mere formalities. At the University of Wisconsin, for example, the Board of Regents, armed with by-laws that called for annual staff elections, twice (in 1858 and in 1867) swept one faculty clean and installed another. In the public sector, this vascular opening and closing of positions was often justified on the ground that the institution received annual appropriations from the legislature and was thus debarred from making salary commitments for a longer term. But this was a specious argument: the institution could well have made longer commitments *conditional* on the receipt of expected funds. The Draconian use of the term appointment was in fact the logical extension of the argument contained in the Harvard statutes: if a succession of three-year contracts could be deemed to have bracing consequences, a succession of one-year contracts could be held to be three times more invigorating. Of great appeal to state officials who sought to apply the practices of the public school to the public university; of lawyers for the university who, true to the cautiousness they were famed for and were paid for, sought the contract safest against a legal action; and of members of the boards of regents who arrived from the world of business and looked upon professors as hired hands, the term appointment carried to such lengths represented the anti-tenure animus at its peak.

Fortunately, not every American institution of higher learning chose to go to such lengths. Indeed, in the very birthplace of the term appointment, a significantly different course was charted. Shortly after it enacted the three-year rule, Harvard received bequests from its English friends and its own alumni to set up professorships in specific fields. Though the givers did not prohibit term appointments, the institution decided not to apply its fixed-term regimen to the eminent or at least promising scholars it wished to appoint to these higher-paying posts and upon whom it conferred the exalted title of "professor." Instead, it appointed them "indefinitely," distinguishing these prominenti from their plainer workfellows who would remain on appointments for a stated time.

Two factors seem to have strongly influenced this decision. One reflected the imperatives of recruitment: the institution perceived that candidates of reputation and self-consequence would find it demeaning to have to pass repeated muster, and it feared that the best of them would not agree to come if they felt their dignity would be so left at risk. The second factor has a similar prudential quality. It happened that the first professorial appointment—that of Edward Wigglesworth to the Hollis Chair of Divinity—was marred by a preliminary inquisition into the candidate's religious beliefs, the distortion of the terms of the bequest to meet the demands of New England orthodoxy, and a great deal of internal friction. The next appointment—that of Isaac Greenwood to the Hollis scientific chair—was also preceded by the arousal of intense religious passion. These pre-election difficulties argued strongly for post-election moderateness. To have had to vote again on these controversial persons after a rather short employment interval would have been to reopen wounds that still needed healing, and few could have relished that gory prospect. All in all, the practical advantages of some form of tenure proved so appealing to old-time Harvard that they overshadowed the stated and implied theoretical objections to it.

Do we not find a similar process at work today? Do we not find administrators disparaging tenure yet hesitating to rescind it, lest in so doing they damage their suits for able scholars, or cry havoc and let slip the dogs of campus war? Do we not find academic leaders who speak of flushing out incompetents recoiling from the search-and-possibly-destroy operations that would be required to effect their wish? Do we not find more advocates of a contract system than we find persons sufficiently incautious to enact it? If this is *not* so, then we will be hard put to explain why, with so many current detractors, tenure still remains an operational reality in most American colleges and universities today.

In time, Harvard had to confront the questions of whether it would be a college largely made up tutors, with a sprinkling of privileged professors, or a university with a large and famous professoriate, assisted by a less eminent and less stable group in the lower ranks. By 1820, it had clearly answered this question of identity: it had by then appointed two dozen professors, not all to externally funded offices but all on indefinite appointments, while retaining a smaller force of tutors and instructors appointed for limited times. Not alone among the private universities, but with the visibility of exceptional success, Harvard came to advertise the close connection between the spread of institutionalized tenure and the rise of institutional renown. And gradually, as the end of the century approached, an increasing number of public universities followed suit. The universities

of Wisconsin, Michigan, and Minnesota, for example, had their own pragmatic reasons for not continuing to adhere to uniform short appointments. Repeated appraisals of the faculty brought on repeated bouts of springtime nervousness that devastated faculty digestions, not to speak of faculty morale. The yearly flood of appointments and reappointments gave boards of regents an opportunity to enter into personnel matters, not formally and occasionally, but constantly and directly, and often in disruptive ways. In the worst cases, the annual appointment system played into the hands of party spoilsmen who, in the frequent competitions, would be sure to keep a sharp eye out for friends. Not surprisingly, it was the presidents of the public universities who led the call for a less astringent policy, first because they sought to protect their executive authority from too much regential interference, and second because they learned the hard way that in a setup vulnerable to purges, they were as purgeable as their faculties.*

By the first decades of the twentieth century, the words "public" and "private" ceased to divide institutions of higher learning in the matter of academic tenure, though the words "ambitious" and "unambitious," or "local" and "cosmopolitan," probably continued to do so.

But this is not the end of the story; what we call "tenure" today existed only *in potentio* in 1900. The fact remained that an indefinite appointment, preferable as it was to a definite one, offered very little by way of protection to its recipients when they and their institutions had a falling out. This is not to say that professors lived in perpetual fear of expulsion. Informal understandings and genteel pledges concerning their continuation in office served to moderate their apprehensions. Long incumbencies were common in this period; outright dismissals were rare. Nevertheless, when dismissals did occur, they were not likely to have been preceded by any kind of probative procedure.**

The Fight for Academic Freedom

One can credit the influence of professionalism with the mounting desire of academics in this period to change this feature of the tenure system. In American higher education, the process of professionalization, which may be said to have begun with the founding of the Johns Hopkins University in the 1870s and to have reached a climax of sorts with the establishment of the American Association of University Professors (AAUP) in 1915, ran along two overlapping yet distinctive tracks. It occurred *within* the disciplines, making them more specialized, more scientific, more esoteric, more convinced of the social usefulness of their ways of knowing. It also occurred *across* the disciplines, that is, among those ancient assemblages called faculties. Professionalization made faculties at once more bureaucratic, in that they came to prefer formalized personnel practices to *gemeinschaft* methods, and at the time less amenable to heirarchic discipline, in that they came to insist on a high degree of work autonomy, on a partial exemption from the chain of line authority, and above all on freedom of teaching, research and extramural utterance on those zones of immunity from the dictates of their employers, which in America came to be defined as the essence of "academic freedom." These interfusing trends, altering faculty roles and self-perceptions, were ultimately to establish the tenure system we know today.

The Ross Case

To get a clearer sense of how and why this happened, one need do no more than recall an academic freedom case that shook this pre-war academic generation: the dismissal of Professor Edward A. Ross from Stanford University in 1900. I blush to exhume this familiar story, in part because I have done so more than once in my writings on the academic profession, and in part because I am well aware that it is not a typical example, that few academic controversies have ever since attained its appalling stature. But it serves too many important didactic purposes to be passed over. The Ross case illustrates the combination of factors that linked the new professionalism to a quest for a more juridical tenure system: the appearance of the social and political activist on the nation's faculties; the rise of ideological conflict between academic social scientists and trustees of wealth; the emergence of an academic-freedom public with a high acoustical sensitivity to complaint; the inclusion of this public into the reference group of top administrators; the discovery that something was missing among all the institutions this society had created to resolve testimonial disputes.

Edward Ross was a member of the school of "new economists" who challenged the *laissez-faire* orthodoxies of their elders and who sought to influence public policy in an etatist vein. More outspoken than most members of that group, Ross had campaigned vigorously for public ownership of utilities and free silver and against Oriental immigration and the monopolistic practices of the Southern Pacific Railroad. Jane Lathrop Stanford, widow of the California rail baron, founder of the institution that memorialized her dead son and its sole trustee as well, got wind of these "radical" expressions, conceived them to be in moral error and as likely to compromise "her" university, and demanded that her employee, Ross, be dismissed. If this confusion between patronage and ownership was more flagrant here than in most other places, the analogy between academic and commercial employment was not at all unusual in the board rooms of academic institutions at that time. Nor was the response of the Stanford president, David Starr Jordan. Torn between his desire to protect the professor and his desire to safeguard the endowment, Jordan first tried to temper and then reluctantly capitulated to the

*Although the common view is that presidents have a genetic weakness for term appointments, historically they were in the vanguard of the fight for indefinite tenure.

**My examination of the histories of over a hundred academic institutions covering the period between 1860 and 1914 nets a total of 68 dismissals and four near dismissals (doubtless the figure would be greater if the *sub rosa* cases of forced resignation were known and were added to the list). Of those professors who palpably fell from grace, only six were granted a chance to be heard in their own defense (I regard a president's word in a trustee's ear as falling short of the minimal requirements of a hearing). And in practically no dismissal case was the faculty formally granted a judging role.

command of his major benefactor. No intramural hearing was provided for by the customs or statutes of the university; Ross was summarily dismissed.

In an earlier day, when a college president declared a faculty member *non grata,* that member would often resign without ado. But of a professional generation that had acquired a sturdy *amour propre,* Ross, far from stealing away in silence, quickly told his side of the story to the press. At once journalists of the populist persuasion seized upon the incident as a parable of the fate of liberal professors in institutions dominated by the moneyed class; their concern for academic freedom was founded on their partiality to Ross's politics. But Ross also had auditors to whom a denial of academic freedom, under any aegis, was cause for grave concern. To the community of social scientists, now organized by specialty into associations, an ideological dismissal of this sort was triply reprehensible: it injured a fellow scholar; it announced that his social science was a branch of lay morality, which was to say, not a science at all; and it cast doubt on the honesty and independence of those of his co-workers who gave the trustee no offense. In an earlier day, the movers of such a dismissal would not usually attempt to disguise their motives; indeed, they would often enough dispatch the heretic or dissenter in order to display the rectitude of their own beliefs. Even around 1900, there were presidents who would curry favor with sectarian sponsors or political partisans by making a public show of their own intolerance. But President Jordan did not seek to match the least of his peers. As head of a university that called itself the "Harvard of the West" and that needed distinguished scholars to redeem that boast, Jordan could not admit, once the story got abroad, that Ross had been deposed for his opinions and that at Stanford social scientists had to watch their step. Instead, he let it be known that Ross had been deposed for his own shortcomings, that the head and fount of his offending had been his "slangy and scurrilous" way of speaking and not the substance of what he said, and that he was guilty of other, unmentionable faults. It appears that Jordan did convince himself that Ross was objectionable, but only *ex post facto,* after Ross had aired his complaint. Still, whether he was sincere or not, Jordan was testifying to the rule that when discharged professors do not hold their tongues, when a professional community exists to hear them, and when that community is important to the president, artlessness in high administrators tends to vanish and an unbosoming candor becomes extremely rare.

Like many *causes celebres,* the Ross affair began with a conflict of testimony and revealed a serious social lack. What Ross had presented as an open-and-shut case of repression was transformed by the president's rejoinder into a riddle of administrative motives. As it turned out, there then existed no social institution that was competent to resolve that riddle. The courts were of little use. Under prevailing principles of constitutional law, employment was a privilege that could be granted or withdrawn by state authority without raising a constitutional issue, let alone infringing upon a constitutional right. Under prevailing principles of contract law, an indefinite appointment (which Ross was given to understand he had, though his appointment technically expired every year) was terminable at the will of the employer, absent any self-limiting provision in the contract or the by-laws. Moreover, to be on the safe side, private institutions of higher learning had fallen into the habit of stating in their contracts that professors held their office "at the pleasure of the trustees," while public institutions would insert the statement that they could be removed "whenever in the judgment of the board, the interests of the college may require it," or some such discretion-saving phrase. Together, the private pre-Freudian pleasure principle and its *pro bono publico* equivalent sought to legalize the contention that governing boards were at liberty to discharge professors on almost any grounds and by any means they chose, and the courts of that period were disposed to defer to that almost royal prerogative. No other instruments of clarification were at hand. There had been a time when ecclesiastical tribunals had stepped in to adjudicate campus conflicts, but they had no place in the secular settings in which most American academics were now employed. Appeal could be made to muck-rake newspapers or to legislative committees of investigation, but these agencies were more likely to heat up controversies than to supply the quietus of proof. How, then, were attacks on academic freedom that were officially disguised as something else to be detected and deterred in this society?

In 1900, the American Economic Association (AEA) provided one sort of answer to this question. It set up an impartial board of inquiry, headed by an economist who was not in Ross's ideological camp, to uncover the reasons for the Stanford action. In a widely publicized report, this committee found that Jordan's charge against Ross had no foundation, while Ross's allegations against Mrs. Stanford were, if not proved beyond a doubt, highly plausible on their face. As well he might, Ross regarded these disinterested findings by his co-professionals as the key to his redemption, the stroke that turned him from a doubtful figure to an heroic victim. In time, the ecumenical AAUP would take over, organizing and routinizing investigations into administrative conduct by cap-and-gown detectives drawn from the profession at large.

But postmortem investigations by outside colleagues were plainly not a sufficient answer to this problem. For one thing, without legal power to subpoena witnesses or search the files, these investigators had to rely on a degree of administrative candor which, if it had been present in the first place, would have made an investigation quite unnecessary. (The AEA committee never did get Mrs. Stanford or President Jordan to respond to their postal interrogatories.) For another thing, a postliminary inquiry usually came too late to avert the action and usually too late to undo its effects. Ross, for instance, was never restored to his post at Stanford. He did land an excellent position at the University of Wisconsin, but so fortunate a result could not be assured to dismissed professors of lesser reputation or to those not so blessed with important friends. The lesson imparted by Ross's failure to gain reinstatement was that once a teacher is wrongfully dismissed, he dies in the minds of the misdoers, and that not even a favorable public report can perform the miracle of resurrection. Plainly, the best time to discover whether a violation of academic freedom was being perpetrated was before

the dismissal was enacted and before it could gain the solidity of an accomplished fact.

The Argument for Judicialized Tenure

It was on the strength of this experience (and of a flock of cases just before the war with similar messages) that the fledgling AAUP put forward its main solution to the problem of buried administrative motives: let the local faculty be involved in all decisions looking to dismissals; let it be involved before such decisions become irreversible; let it be involved in a judicial manner—as evaluators of alleged offenses, as triers of disputed facts. "Let the faculty be involved" was something more than "Let there be a hearing." It was not intrinsic to the concept of due process, whose essential features could be supplied by a fair-minded hearing before the board. Nor did it draw on non-academic parallels: where dismissals *were* pre-adjudicated in this country, as they were in the federal civil service and increasingly in public school teaching, no rule or compelling custom called for peer-run trials. Nevertheless, the idea seemed apodictic to most academics imbued with the new professionalism. Thinking of themselves as resident agents for the disciplines and as counsellors to society on call (rather than as pedagogues pure and simple), they could argue that much of what they did lay outside the ken of their institutions and could not be knowledgeably evaluated by lay boards acting on their own. Already involved in the recruitment and selection of their own members, these academics could more readily believe that their involvement in the expulsion or retention of their own members was a natural next step. Above all, while few of them disputed the legal power of governing boards to render the ultimate decision in dismissal cases, they thought it essential to the very existence of professionalism that laymen defer to the gnostic prowesses of the staff. As the AAUP put it in 1915, it is "inadmissible that the power of determining when departures from the requirements of the scientific spirit and method have occurred should be vested in bodies not composed of members of the academic profession . . .

"It is unsuitable to the dignity of a great profession that the initial responsibility for the maintenance of its professional standards should not be in the hands of its own members."

The slow, but eventually thorough institutionalization of collegial pretermination hearings was one of the two major innovations that brought the modern American tenure system into being. (The other was the setting of time limits to the renewal of term appointments of junior faculty, a change I shall advert to in a moment). Judicialized tenure—if I may call it that—purports to protect academic freedom. It does this not by granting academics an inalienable right to their positions, but by granting them a presumption of fitness for their positions and by assuring them that when that presumption is challenged by administrative authority, the issue will be examined in a formal hearing by peers acting as a court of first impression and by boards that will ordinarily be bound by the verdicts of that court.

The Argument Against Judicialized Tenure

It is important to note that it is this dismissal mechanism, and not an untouchable sinecure (which exists only in the minds of untutored critics), that the current opponents of tenure would destroy. It takes some effort to discover the gravamen of their complaints. In my readings in the current anti-tenure literature, I seldom encounter the argument that academic freedom does not *need* to be protected, and I almost never encounter the argument that it does not *deserve* to be protected. Do the critics claim that judicialized tenure is insufficiently protective of academic freedom? I know of no competent analysis of dismissal cases who would say that the system fails to curb abuses that constitute violations of that valued freedom, and I rather doubt that the more theoretical commentators would press this claim. The interposition of a faculty body between the administration and the governing board plainly reduces the likelihood that attacks on academic freedom will be allowed to masquerade under other names. It serves as a listening device that taps the auricular communication between these powers and thus may expose their underlying motives. It serves as an instructional device as well, bringing the normative judgment of the profession to the attention of lay trustees who might otherwise get their order of proprieties from a more alien source.

Is it feared that the local faculty, overcome by its own guild complexes, will exaggerate the frequency of abuses of academic freedom? Sometimes this fear is expressed, and sometimes it happens that the local faculty, adopting the principle of "my co-professional right or wrong," presume to espy a violation where none in fact exists. But no fair examination of these procedures in action would conclude that this is a common failing. Indeed, the clarifications generated by these procedures often prove as helpful to the institution as they do to the individual. Just as an administration may hide an improper motive by casting aspersion on the victim, so a professor justly dismissed—but without a precursive peer inquiry—may blacken the motives of the administration in order to shield his guilt. Peer hearings, by clearing the air of rumor, may spare the unoffending employer, even as they spare the innocent employee, the injury of a false report.

I sense that most critics of judicialized tenure do not quarrel with what I have just said in its behalf. Rather, they hold that the virtues I have cited are paled by the vices I have ignored. In the first place, they believe that in the ordinary course of events the cumbersome apparatus of peer-run hearings does more to inhibit the expulsion of incompetents (of whom there are presumed to be many) than to impede the dismissal of dissenters (of whom there are presumed to be very few). I believe that there is

Where I part company with the critics is over their assumption that because the number of tenured professors dismissed is small, the number of unfit professors left in place is large.

an element of truth in this criticism. Though the AAUP has always insisted that the mechanism it designed and helped establish can and should be used to turn unworthy people out, there is no doubt that it principally has been used to keep deserving people in. This is because it repels potential users and is therefore rather sparingly used. Required to bring charges rather than effect discharges, the president who would utilize this machinery must put himself on the plane of the person he accuses and suffer to have his judgment questioned by a faculty committee clad in robes. The executive ego must be unusually strong, or else unusually provoked, to invite that ordeal.

Where I part company with the critics is over their assumption that because the number of tenured professors dismissed is small, the number of unfit professors left in place is large. These estimated magnitudes are, of course, pure conjecture; imagine conducting a campus-to-campus census to ascertain how many dullards remain in the tenured ranks! But it is surely safe to assume that the ratio of incompetents to competents (as the institution defines those terms) is significantly lower at the tenure level than it is at the non-tenure level, where weaker and fewer tests for weeding out incompetents have been applied. Moreover, if the quality of our faculties really suffered because the dismissal machinery tends to gather rust, it would follow that the worst faculties in the nation are in institutions where this machinery is almost never used—which happen to be the major universities. It would also follow that the American professoriate of 1900, which could not avail itself of this machinery, made a more significant contribution to scholarship and rated higher on the world exchange than does the American professoriate of today. Since neither theorem is correct, one may question the validity of the starting premise.

In essence, the last criticism is but the latest version of the old notion regarding the slothful effects of job security. Today it is encapsulated in a well-worn metaphor that a university contains, but under the rules of judicialized tenure cannot divest itself of, dead wood. It cannot be denied that tenured faculties may grow moribund. But whether tenure is the cause is another matter. The trouble with the dead-wood metaphor, which conceives of the university as a lumber yard, collecting and sorting finished products, is that it ignores the multiple ways in which the university functions as a society and shapes the very material it holds. Banishment and the threat of banishment are but two, and not the most continuous and effective sanctions that are available to an academic institution out to improve its staff. Fear of losing the respect of colleagues is often a more controlling negative sanction; post-tenurial rewards and denials are among the positive sanctions known to work. The warehouse metaphor is thus in double error. It understates the extent to which academics rise or sink to the level of their circumstances, and it assumes, against much evidence, that one stick (expulsion) and no carrot is the governor of what we aim for and achieve.

One sometimes hears a variation on the theme that tenure is indiscriminately protective, and that a staff which is indiscriminately protected is also likely to go unpoliced. Once admitted to the tenure circle, so the argument goes, a faculty member can usually rest assured that his colleagues will not do much to see that he performs his duties and will hardly ever initiate an action aimed at condign punishment. Critics of the academic profession often regard this collegial inertia as an abandonment of professional responsibility, and critics of judicialized tenure sometimes blame it for this supposed flaw. Here, too, I have some sympathy for the critics. A modus operandi that casts administrators as prosecutors, professors as defendants, and peers as guardians of the professor's most precious right, hardly suggests that tenured colleagues should act as intrastatus cops. Still, I would point out that the same kind of remissness—if that is quite the word—is not unknown to other professions that do not provide for peer-conducted trials. And I would ask whether, in a profession such as ours, it is altogether to be regretted that the tenure rules encourage a live-and-let-live mood. When one considers what would have happened during the 1970s if the riven faculties of Cornell, Harvard and Columbia had been able to retract their tenure verdicts and could vote on one another once again, when one imagines the politicking that would have preceded every rethought action and the feuding that would have accompanied every hostile act, one may see merit in an arrangement that produces, among those who work together, a certain degree of accusatory restraint. Respite from peer oversight and attack may indeed by particularly required for those whose work consists of the creation and the dissemination of new ideas. It should be kept in mind that censoriousness and censorship have more than an alliterative connection.

In some quarters, judicialized tenure is criticized on another ground, this having to do with the manner in which faculty hearings are conducted. The notion that they should be conducted in a formal manner, and in accordance with rules akin to those that have evolved in law, was hardly adumbrated by the AAUP in 1915. It was not formulated until 1940, when that professional organization joined with its administrative counterpart, the Association of American Colleges (AAC), in what was to become an influential tenure-and-freedom pact. Prior to that time, the relevant term in the AAUP lexicon had been "fair procedures," a term that conveyed a sense of the scholar's free-ranging and unregulated mode of inquiry; after 1940, the relevant term was "academic due process," which carried the strong suggestion that predismissal hearings should mimic the methodology of the courts. This is not in every respect a happy development, and I am in partial accord with the critics who decry it. Carried beyond a reasonable point, it implies that academic trials and criminal trials are more than cousins and may be twins, and this can be pernicious doctrine. Disemployment is a less horrendous penalty than incarceration, and it is inappropriate to apply the same opportunities for legalistic maneuver, the same standards of admissibility of evidence, the same system of procrastinative appeal, in hearings that generate such different sanctions. What is more, courtrooms and universities are different kinds of institutions and they live by somewhat different norms. An adversarial contest, when it is too intense, can defeat one of the prime urges of the professorial mentality, which is to try to look at issues from every side. Winning a case on a petty technicality may be

the mark of a clever attorney; it does not become an academic who ought to care more for truth than tricks.

Nevertheless, though I believe that there is reason to be alarmed about the danger of creeping legalism, I also believe that there is reason to be glad about the introduction of a more lawyerly approach. The AAUP once fondly believed that faculty members were equipped by career-long training to deal justly with their fellows without further instruction. Too many instances to the contrary have accumulated—too many findings based on silent charges, too many verdicts based on unchecked rumors—to permit us to cling to that self-flattery. The requirement that an accused teacher be presented with written charges, each of which he shall have the opportunity to rebut; that he be allowed an advisor who may act as counsel at the hearings; that a stenographic record of the proceedings be kept and be made available to all the parties; that witnesses be subject to limited cross-examination—these have been salutary reminders that a dismissal trial is not a free-for-all. The problem with hearings run by peers is that they call on friends and enemies to act as judges. The glory of academic due process is that it manages, when properly defined, to make that self-transcendence not impossible.

But we no longer need academic due process, I hear a critical chorus saying: we can now rely on the sympathetic courts to protect academic freedom. What plants this sanguine conviction in certain minds is the recent tendency of the courts to insist that the state as employer, no less than the state as policeman and prosecutor, must adhere to the procedural and substantive constraints laid down in the federal Constitution. Of all the contentions of the critics of judicial tenure this is the most far-reaching, for it holds that this system is no longer needed to perform the one function that redeems it, and that it loses therefore the one great counterweight to its numerous liabilities.

Of all the contentions of the critics, this one strikes me as the least well founded. Too see it for what it is—a modicum of truth wrapped in a shell of fantasy—one has only to imagine how well Edward Ross would fare if he were to return to this vale of tears to seek vindication and redress in a state or federal courtroom under currently revised readings of the Constitution. In all likelihood, the attorney for the defending Stanford University would move and be granted a dismissal on the ground that the conduct of a private employer falls outside the purview of the Fourteenth Amendment, which imposes its forbiddances only on the agents of a state. But let us suppose that the court, by stretching the state-action doctrine, were to hold that Stanford's tax-exempt status or large public subsidies qualified it as a public employer. Ross would then have the choice of arguing that under the terms of the due-process clause of the Fourteenth Amendment, he was entitled to a statement of reasons and a collegial due-process hearing prior to the termination of his employment, or that he was entitled to reinstatement because the ideological reason for the termination violated his academic freedom, which is protected by the First Amendment as incorporated into the Fourteenth. If he chose to press his procedural claim, Ross would find himself enmeshed in dilemmas of almost Catch-22 dimensions. According to the reasoning of recent cases, the only certain way to get one's procedural rights vindicated judicially is to have had them promised and not fulfilled institutionally, or—to paraphrase William Van Alstyne, a learned student of this arcane subject—judicialized tenure must exist in fact before it will confidently be held to exist in law. But Stanford had not promised Ross or any other professor a due-process hearing prior to termination, and it is exceedingly unlikely that it would be found guilty of the kind of reneging that would put it afoul of the due-process clause. This in itself would not be dispositive: in concurrent 1972 decisions, the Supreme Court held that even non-tenured teachers might be constitutionally entitled to an institutional hearing if they could meet certain threshold requirements. If they can show that they had a property or liberty interest in their continued employment, they might then show that their interest had been impaired by the state employer acting with unfettered discretion, and an institutional hearing might be ordered to correct that constitutional abuse. But Ross would find these tests were more like barriers than escape hatches. To have a property interest, one must have a legitimate entitlement to it, such as emerges from an independent source—a state statute, a "common law" of re-employment for persons in similar situations, or possibly a long history of reappointments that would justify an expectation of retention. Ross, having served for but two years at Stanford and in the state of California, which, like most states, did not enact faculty tenure statutes, would have found very slim pickings here. To demonstrate a liberty interest, a person would have to prove that his freedom to take advantage of other employment opportunities had been damaged by the termination of his appointment. Ross suffered no such damaging consequence, and probably he would not succeed in pressing a loss-of-reputation claim.

Suppose Ross were to take the alternate route and were to seek reinstatement on the ground that his constitutionally protected right to academic freedom had been infringed by the punitiveness of his employer? It is not at all certain that he would be permitted to reach this substantive issue until he had passed the aforementioned threshold tests, but even if he were given a green light he would find it hard to arrive at his destination. According to recent rulings by the Supreme Court, the Constitution recognizes academic freedom as a distinct subset of First Amendment freedoms, but it does not recognize it as an absolute right. It balances the public employee's interest in freedom against the public employer's interest in a disciplined and harmonious workforce, and it determines in each specific instance which interest should be accorded the greater weight.

In the *Pickering* case, the Court upheld the constitutional claim of a public school teacher who had been discharged for publicly criticizing his school board. The balance, it found, weighed in favor of the teacher because the teacher's expressions of opinion were not aimed at those with whom he had a working relationship, and also because they were of little consequence; they were greeted, the Court said, with "massive disbelief." Presumably, then, if these expressions had been aimed at the school principal and were widely considered credible, the school board could have fired the teacher

with constitutional impunity. One may be sure that the attorney for Stanford University would pursue the logic of this precedent and make the most of the disruptive or insubordinate consequences that could be attributed to the words of Mr. Ross. Of if *Pickering* does not quite serve his purpose, the Stanford attorney might choose to rely on *Mt. Healthy v. Doyle*, a case in which the Supreme Court rejected the argument that a public employee must be reinstated simply because his constitutionally protected conduct was one of the grounds for the decision to discharge him. Provided the school could present a convincing claim that it would have discharged the teacher for a legal reason, it was not bound to restore him to his position simply because it discharged him for another, illegal reason. So the attorney for Stanford University might argue that while it did penalize Ross for his opinions, it was not in violation of the Constitution because it also would have dismissed him for his scurrility and his slang.

The tenure system of today is not only the old system judicialized; it is also the old system more rationalized, particularly with respect to the time span of probation.

Pace, shade of Edward Ross. You do not have to fight your case in court against such odds. And your professional inheritors, if they are wise, will not forfeit their patrimony on the mistaken ground that the law will accomplish all. They will use the courts to supplement, not supplant academic tenure; they will take legal action to protect academic freedom as a last, not as a first resort.

The tenure system of today is not only the old system more judicialized; it is also the old system more rationalized, particularly with respect to the time span of probation.

It will be recalled that, under the older arrangement, a faculty member in the lower ranks continued to hold a term appointment. These lower ranks were often used as proving grounds from which qualified persons were chosen for promotion. But the length of the trial period was seldom specified and in most cases could be endlessly prolonged. In effect, there emerged a two-track system in which the nontenured teacher, appointed again and again, could compile as many years of service as did his higher-ranking colleagues. The virtue of the two-track system was that it did not force anyone to be displaced. Its demerit was that it granted the member on the lower track no surcease from the pain of temporariness and no certainty as to when, if ever, he would gain relief.

The 1940 Statement dealt with this problem too. During the Depression of the 1930s, it had become the practice of numerous institutions, faced with financial stringency, to let junior faculty members go, no matter how long they had served, or else keep them on at long hours and low wages, with no prospect of advancing their careers. Among other things, the aim of the authors of the 1940 compact was to assist this academic underclass. In the interest of institutional flexibility, they did not propose that everyone be placed on a single track, that is, they did not provide for instantaneous tenure. But they did take steps to mitigate the problems of a two-class workforce. Drawing on the language of the civil service, they used the term "probationary" to describe the pretenure stint, thus making it clear that it was a pretenure stint and not a collection area for a supply of permanently cheap and unhopeful labor. They were the first authoritative codifiers on this subject to dissociate tenure from rank and tie it exclusively to years of service, thus making it possible for senior faculty to lay claim to *de facto* tenure—tenure based not on the say-so of the institution, but on the number of turns on the tenure clock. They set the maximum probationary period at seven years, which was longer than the fledging unions of that time desired, but shorter than the patrician founders of the AAUP had in mind. To counteract one effect of the Depression—junior faculty wandering like so many Ishmaels from one institution to another, serving as probationers in each place until their time was up and then being hired at the same status in another—the AAUP won over the AAC to the proposition that all the years spent by a person in a profession should be counted in the probationary reckoning (though by mutual agreement no more than a three-year portion of outside service need be carried over). The net result was that the 1940 Statement required the institution to reach a tenure decision at a time certain and without equivocation, thus substituting for the older two-track system a single track with a climactic fork. All in all, the thrust of these provisions was toward greater clarity, predictability, and rationality, and away from the customary, the ambiguous, the hit and miss. Max Weber would have understood these provisions very well.

And so, at the time, did a number of junior professors, who welcomed the provisions that worked in their interest: shorter periods in which they would have to remain in nontenured service and the right to a formal hearing for those who had served beyond that period and then had been notified that they would be discharged. It is ironic that a system designed for the academic journeyman in hard times should, at the onset of *this* depression, become the target of complaints from its beneficiaries. But of course the complaints are understandable. With poor prospects for intramural promotion and with outside tenured positions hard to get, assistant professors have reason to wish to trade the certain prospect of unemployment for the lesser pains of term appointment, either by extending their own probationary periods or by demolishing the entire tenure system, placing everyone on short-term contracts and letting the best—or the cagiest—survive.

I do not believe that we have to return to the two-track system or undo what has taken sixty (or six hundred) years to accomplish, in order to ease the lot of the junior faculty. Institutions refrain from granting tenure citizenship to its young professors in part because they are unwilling or unable to pay the extra costs they believe such an action would entail. But the tenure rules, as

defined in 1940, do not say "up or out"; they say "in or out." They do not ordain that persons be raised in rank when they are tenured, or given a simultaneous boost in pay; they ordain merely that persons who are tenured, following the successful completion of the probation period, should be granted a bundle of predismissal judicial rights. I am not delighted with a cost-reduction strategy that strips tenure of all perquisites beyond that bare one, but I prefer it to the misuse of the financial-exigency exemption (also provided for in the 1940 Statement). Originally meant to sanction the removal of tenured persons without due process only when institutions faced an imminent financial crisis, it has been used to justify such actions whenever an institution feels a financial pinch. *That* reading of the rules nullifies judicial tenure; tenure without salary or rank promotions, however unpalatable, does not.

And there is more that the profession can do to heighten the rate of circulation in and out of tenured posts. The number of those in the academic profession more than doubled in the twenty years following 1950; no modern sizeable occupation ever grew so fast in so short a season. A surge of incomers into a profession in one era presupposes a surge of outgoers from that profession in another era, the interval being fixed by the time it takes to complete the conventional employment cycle. If this profession had been able to retain the modal age of mandatory retirement at sixty-five, professors would start to surrender their tenure slots in mounting numbers in the middle 1980s. Under the law due to take effect for academics three years hence, the mandatory age of retirement will be moved up to seventy, and the exodus will be correspondingly postponed. Given the waiting times for probation, an exodus beginning in 1985 would allow the most recent appointees to the junior faculties to come up for tenure at the start of a demographic windfall, which would greatly enhance their chances of success. A five-year delay, on the other hand, would subject this generation, along with several preceding generations, to the rigors of a contracting field. The answer to this problem is to fight for the repeal of that part of the Pepper Act that applies to the academic profession—and to fend off state or federal legislation that would eliminate any fixed age for retirement. The answer is *not* to demolish tenure. To think otherwise is to hold that the baby and the bathwater are equally disposable.

To those who feel I am urging a small amendment to a system in drastic need of change, proposals such as these will seem less than adequate. But this criticism frames the difference between those who take all their cues from the urgent present and those who look for guidance from the edifying past. I believe that the history of this subject tells us that academic tenure has never served and cannot serve to meet every academic desideratum; that it cannot and should not bear responsibility for everything that may go wrong. The current form is a creature of professionalism, and one cannot be destroyed without the other. There is no real substitute for tenure; our concern should be to perfect it and make it workable, no less in trying than in easy times.

The Poverty of Historicism: A Critique of Walter Metzger's Defense of Tenure

By James O'Toole

Let us imagine a man advancing the case that the sexes are inherently and justifiably *un*equal. He might point out that men deserve their dominant social position because they are stronger than women and must therefore do the heavy work and protect the weaker sex. He would argue that ten thousand years of human history have demonstrated the wisdom and necessity of male social dominance. This man might well conclude by warning that any attempt to alter the "natural scheme of things" would lead to (a) an increase in homosexuality; (b) the failure to properly care for children; and (c) the demise of civilization as we know it.

Of course, this argument is fatuous. It is built on the false assumption that what once was true is true still, and that any change in tradition will lead to disaster. But these are the same building blocks which Professor Metzger has used to construct his defense of tenure. Why then do the majority of scholars fail to recognize this? Perhaps the reason is the same psychological blind spot that allowed European and American men to persist in their belief in the social inferiority of women for seventy-five years after J. S. Mill proved it wasn't so, and for twenty-five years after physical strength was no longer requisite for the majority of jobs in industrialized nations. It seems clear that when it is not in one's perceived self-interest to recognize the truth, people are capable of erecting rationales in defense of error. For scholars to recognize that it is only myth that supports tenure is as threatening as for men to recognize the myth of their inherent superiority.

We can measure the sacredness of tenure in terms of the responses of its determined advocates toward those who have suggested the nakedness of the concept. The dearness of tenure also could be measured statistically; several recent studies have found that achieving tenure is the most important (or second most important) goal of American scholars (the exact ranking varies by discipline). Whatever the measurement, all studies show that tenure is the one employment benefit that no right-minded scholar would give up.

As one who has renounced his own tenure, I admit that these findings put me in the hole with most of my peers before I begin my argument. Those outside academia, however, see the issue of tenure in a different light. For example, I recently asked a friend of mine, a former labor-union leader, what he thought of tenure. "Kid," he said, "talk straight with me. Call it what it is: tenure is *job security*, pure and simple."

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If such plain talk is offensive to any reader, I apologize. For the sake of brevity, I will sacrifice eloquence to make my case that the benefits of job security, as enumerated by Professor Metzger, are far outweighed by its costs.

The Price of Tenure

The first cost of academic job security is immobility. In academia, the turnover rate among tenured professors is now less than one percent annually. Recent federal estimates indicate that in the 1980s, 80 percent of college and university professors will be tenured. Already, in some academic departments in some leading universities, *all* faculty members are tenured. In some of these departments, the median age of tenured faculty is as low as 45. This means that professors can look forward to twenty years or more with the same colleagues, in the same departments. Since the lack of career options is a prime source of job dissatisfaction, this cannot be a salubrious situation for these immobile professors.

Who benefits when all members of a department are tenured? Not the young, highly qualified scholars who now find no places in academia. Not the students who would benefit from this generation of "lost scholars," individuals who are frequently more qualified than the tenured faculty whose places they may never take. Not the blacks and women who want jobs in academia but who find that affirmative action is vitiated by fully tenured departments. Not even the tired, unproductive fifty-five-year-old who is now merely going through the motions of teaching and research. He knows by the reaction of students that he is no longer an inspiring teacher. He knows by his paycheck that the university does not feel that he is carrying his fair share of the workload. He knows by the behavior of his colleagues that he is no longer respected. Why, then, doesn't this poor soul go out and get a job that interests him, and at which he will make a productive contribution? He stays on mainly because there is no incentive powerful enough to motivate a 45-year-old with deflated self-esteem to risk a fresh start. Moreover, a further disincentive to change is the cultural dictate of the profession that academia is a lifelong calling. Thus, the second cost of tenure comes in terms of impaired human growth. It used to be that only the clergy and academia were viewed as lifelong callings. Now, with priests and nuns dropping out left and right to experience mid-career change (and other joys), only the scholar remains cloistered for life. For all the rest of society, repotting is the name of the game. But not for the professor the revitalization of a second career. Some profesors dig-in for the duration. And all too often they develop trench rot. The real loser in the tenure game,

then, is the individual who most thinks he needs tenure. He will go to the grave unproductive, embittered, with little self-respect . . . but tenaciously holding on to his job 'til death break the grip. And society loses, too. Because in a different job, this individual could have made a productive contribution.

The next cost comes in terms of quality. Because the decision to tenure can cost a university up to one million dollars over the life of a professor, it is incumbent on a university to make a *prudent* decision. Too often this means a *safe* decision. Ironically, then, the tenure system—once designed to protect the likes of Socrates, Plato, Abelard, Galileo and Scopes—now protects the narrow-focused, the scholar who knows everything about the insignificant, who is acceptable to the established discipline, who doesn't make intellectual waves, and who will never give offense as he runs his millionth multiple regression.

There is also a related research cost: young scholars in search of tenure are driven into a frenzied seven-year effort to produce articles in refereed journals. They write not because they want to say anything, or have anything to say, but because they *have* to say *something*. For the decision to tenure is based on the most easily measured output of academia—the "n" of articles. And the required number, a moving target, is never stated. It is no wonder that so many scholars never write another word after they undergo this inhumane rite of passage. In short, tenure not only leads to the production of the meretricious and the banal, it is an indirect cause of the "publish or perish" imperative.

Tenure undercuts academic freedom by putting power in the hands of senior faculty members to impose doctrinal orthodoxy on untenured junior faculty.

Tenure and Academic Freedom

With such manifestly high costs, why isn't the system abolished? The prime justification for the continuation of tenure is that it is essential to the preservation of academic freedom. As Metzger demonstrates, this was once true. But things have changed drastically in American society since the dramatic instances of the abuse of freedom that Metzger cites. Today, the source of academic freedom is the insistence by the courts that universities provide employees with full Constitutional rights of due process. In the case of *Ofsevit v. California State University* the high court of California ruled that the First Amendment protects *all* teachers from dismissal based on their political beliefs or activities. Significantly, Professor Ofsevit, the subject of the ruling, was *not* tenured. In addition, the courts have moved in almost all states to protect employees from dismissal on grounds of race, religion and other arbitrary reasons. Ironically, even the American Association of University Professors (AAUP) has said that professors have academic freedom *before* they are tenured. So it is not tenure that protects academic freedom.

In fact, tenure undercuts academic freedom by putting power in the hands of senior faculty members to impose doctrinal orthodoxy on untenured junior faculty. And because so many departments are tenured-up, tenure actually removes an effective mechanism to preserve freedom: namely a competitive labor market with many and diverse employers. It was the market that protected radicals during the McCarthy era when tenure failed to do the trick, and it is the market today that protects journalists and others in politically sensitive jobs. To my knowledge, no one suggests that journalists need tenure, yet Metzger and others argue that professors of engineering do. Tenure also works against the hiring of radicals: an institution may risk hiring a radical on a contract basis while it would not take the risk of giving the same person a guarantee of lifelong employment.

But let us give tenure its due. As Metzger shows, it was once needed. Its lasting contribution was to encourage the creation of the stringent codes of due process and the elaborate grievance procedures that now protect scholars in all major universities. But today tenure is as much an anachronism as the excessive civil-service protection that was needed in the days of Boss Tweed, or the male dominance that was needed to protect women and children from roving bands of wolves. Today tenure serves no useful purpose. It should be abolished.

In saying this, I am not advocating fixed-term contracts which carry with them the possibility of eleventh-hour dismissal. Personally, I would like to see experimentation with rolling contracts which would provide perpetual employment with, say, a required three-year notice prior to dismissal. But what really matters is for universities to *experiment* with *many* alternatives to tenure. For I fear that if we do not reform ourselves, reform will be imposed on us by enraged and illiberal legislators.

As it took a long time for men and women to realize that the social equality of the sexes is desirable, it will take a long time for professors to realize that the abolition of tenure is in their real self interest. If you will, then, consider this rebuttal as an exercise in consciousness raising. Someday, professors will realize that tenure hurts the people it was designed to protect. In the future, professors will not discount (as Metzger does) the fact that tenure causes career immobility, inflexibility, and stagnation, and that it encourages over-specialization and resistance to change. In particular, we professors will one day see through the Metzgerian strategy: namely, to argue on the high ground of academic freedom to protect the base and unstated goal of job security. Be this a clever strategy or a process of rationalization, it leads one to say of Professor Metzger what Brendan Gill wrote of Edmund Wilson in a different context: "... he raised what he could not help about himself into a principle and then congratulated himself upon practicing it."

17

The Concept of Tenure And an Alternative

By Penina M. Glazer

The literature on tenure, and particularly Professor Metzger's distinguished contribution to that field, establishes several basic premises. The principal two are that tenure as we currently know it grew out of particular circumstances in the history of the modern university, and that tenure is intimately linked to academic freedom—the bedrock of the advancement of knowledge. I too believe that the historic roots of the concept of tenure are critical. But as an historian, I am skeptical that tenure is a trans-historical universal concept. I want to examine which aspects of the concept are time-based and subject to historic change.

Assumptions of Tenure

In addition to the acceptance of tenure as an historical "given," there have emerged a series of implicit assumptions about tenure. In the profession at large, it seems to me that tenure is also associated with the following ideas:

- Tenure provides job security in a profession which is not very well paid, despite the requirement of many years of training and preparation. In some sense I think security is seen as a trade-off for financial remuneration, which is lower than that provided by the medical or legal professions.

- Tenure is seen as a foundation of a meritocratic system. Decisions about awarding tenure are made by other tenured full professors, who are presumably free from self-interest when making their judgments.

- Tenure is presumed to assure high-quality faculties for institutions and their students. The probation period and the serious evaluation which occur before the institution makes a lifetime commitment are designed to retain the best and the most ambitious faculty.

- Tenure is supposed to assure professional growth over a lifetime of service to the academy. Although this is never explicitly stated, it appears that most institutions have operated with the belief that once professors are chosen for permanent employment and are free to follow their unfettered pursuit of interesting ideas, natural career growth will occur. (This is often aided by a sabbatical leave policy, which allows for professional and personal renewal.)

Recent history has challenged the efficacy of tenure and obligates us to look at each of these components. Not only is each of these components analytically separable, but each also has an historical dimension.

(1) Infringement of academic freedom is a serious issue and the one which has been given the most careful attention. In general the American Association of University Professors (AAUP) and its spokesmen have argued that even where such infringements have occurred (whether in the form of McCarthyism and the firing of Professor Sweezy or movements against homosexuals), the basic commitment supersedes such violations. The basis of their assumptions is that one doesn't give up a belief in the law because laws are violated periodically.

This response to academic-freedom infringements does not go far enough. In recent years the challenges to freedom have been substantial and go far beyond the relationship between faculty and employer. At the very least, recent statements by President Bok of Harvard* and others about the role of the Central Intelligence Agency (CIA) and other covert agencies on campuses suggest a violation of academic freedom, which uses and abuses tenured as well as untenured faculty. Although permanent faculty cannot easily be fired, there is little institutional protection from outside interference with individual's research by agencies whose primary commitments are not to the free flow of knowledge.

(2) The question of job security, as guaranteed by tenure, is also problematic. The rather rapid increase of unionization movements across U.S. college and university campuses speaks to a need for collective security not yet answered by tenure. Furthermore, security for junior professors, always a serious issue, has in the current period of retrenchment in higher education, been highlighted by the spectacle of a generation of gypsy instructors, academic transients moving from one-year appointment to one-year appointment. The real question is whether academic freedom and security for a few is being paid for by those in the untenured ranks.

(3) The unbiased meritocracy which tenure is designed to support is under great challenge. New emphasis on affirmative action and the extensive documentation of the experience of women and minorities in most universities have exposed serious contradictions in this value system. The assumption that tenured full professors are only interested in quality of intellect has been found wanting in the whole gamut of activities which contribute to the creation of new professional generations, from graduate admissions policies to opportunity structures

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*D. Bok, as quoted in *The New York Times*, July 21, 1978, (5)#2:2.

(mentor relationships). We know that women and minorities have not been hired on an equal basis with men, and there is no reason not to assume similar prejudice in tenure decisions.

Careful and serious tenure decisions should assure a high quality faculty. Clearly, many institutions have faculties which are very distinguished. Yet in a period when young, intelligent, well-prepared faculty are confronted with stringent tenure quotas and often shut out—and when they often see that those tenured ten or fifteen years ago are less qualified—they are inclined to define tenure as an historical accident. Students have no choice in the matter of who teaches them; they are left with faculty who got in first, with all the mixture of quality that entails.

(4) A final component of tenure is the assumption that professional growth is a natural phenomenon for tenured faculty. There are a few additional structural incentives in many institutions—promotion to full professor, sabbatical, and in some instances merit salary increases. Beyond this, I believe most institutions have assumed that natural turnover would occur, making way for new people and new settings to stimulate professional growth. If Jim O'Toole was correct in noting at the 1979 National Conference that among tenured faculty there is less than one percent turnover nationally, we are confronted with a problem which won't go away of its own accord.

It is fairly clear that tenure has become an overloaded concept. Over the years in which it has dominated U.S. higher education, it has been endowed with so much weight that most institutions have not given serious thought to the concepts of academic freedom, professional growth, or meritocracy as separable from it—until faced with crises. Then they often have been forced into a defensive posture in a court suit or government order.

These critical issues have been subsumed under a proforma adherence to tenure for too long. Circumstances today demand that we give them full attention.

The contract system provides flexibility; as many faculty members leave at mid-contract as leave through non-reappointment, either because they are concerned about their performance or because a periodic self-evaluation has persuaded them to seek other professional opportunities.

The Contract System as an Alternative

Hampshire College has experimented with a contract system since it opened in 1970. The College was founded to experiment with several major ideas in higher education. The most central are progress by examination, individualized curriculum, interdisciplinary schools rather than departmental organization, and multi-year contracts (four, five, and seven years) instead of tenure. An elaborate review process occurs eighteen months before the end of each contract, with major input from the faculty member, colleagues and students in his/her school, an all-College committee, and the President.

What do we know after nine years of experience with this system? First, the worst fears of the profession were not realized. Some critics predicted that the system would result in *de facto* tenure for all, irrespective of quality, but this did not occur. There has been as much faculty turnover as the College can tolerate—and substantially more at the associate- and full-professor levels than is the case at tenured institutions. The contract system provides flexibility; as many faculty members leave at mid-contract as leave through non-reappointment, either because they are concerned about their performance or because a periodic self-evaluation has persuaded them to seek other professional opportunities.

The second greatest fear voiced at the outset was a presumed loss of academic freedom. One reappointment case was appealed in our regular appeals process in nine years, which is probably low for this decade. The variety of academic work undertaken, courses taught, and academic opinions expressed at Hampshire is certainly no more circumscribed than the variety demonstrated at other colleges and universities. Perhaps most important in this regard has been the recent adoption of a careful academic-freedom policy, which was accepted by the faculty, the administration, and the Board of Trustees. It was the result of two years of deliberation and debate. Even some AAUP activists, who do not acknowledge the possibility of academic freedom without tenure, admitted grudgingly it was a reasonable policy which ensures procedural guarantees and due process for all members of the faculty.

In recent discussions about revising some of the provisions of the reappointment policy, it became clear that in the faculty at Hampshire only a small minority favored tenure. Despite a variety of criticisms of certain review procedures, most faculty of all ranks endorse the contract experiment. In part they believe it is a distinctive feature of the College's overall experimental mission, to which they have committed themselves. They also value two results of the contract experiment—the greater equality among junior and senior faculty, and the flexibility which such a system provides.

What have been some of the problems with the contract system? There are several.

- Periodic review is time consuming and produces a high degree of anxiety, even among the strongest faculty members. A thorough evaluation exposes one to a level of scrutiny which is embarrassing, even when done with care.

- The open and participatory character of the review process can create ambivalence. It is tension-producing to try to maintain good colleagial relations and give a dispassionate evaluation of one's peers; this situation may be exacerbated if it is anticipated that the tables will be turned a year or two later.

- We have just begun to think through the implications of aging and faculty careers. How should a review for a

senior professor with twenty-five years of experience differ from a review of someone who is just beginning an academic career? There is no expectation at Hampshire that faculty should be discarded at the time when age and health might require some slowing down. The structure at Hampshire is such that the senior people carry the heaviest load, no matter what measures we use to quantify "faculty load." We are not facing a problem of "dead wood," but we are still addressing questions of security for older members of the faculty.

Summary

Without spelling out the details of this particular contract system, I would like to summarize what I think is significant in this discussion. A contract system allows certain questions to surface which have been somewhat buried by the permanent-tenure system. It forces issues such as periodic self-evaluation procedures, expectations of professional growth and competence at different stages of the life cycle, and how to provide an academic freedom policy and procedures to *all* members of the faculty.

Contracts, like tenure, are employment relationships between professors and colleges or universities. They have some advantages and some disadvantages.

I believe that it is worthwhile that schools like Hampshire and others experiment with and test the options available within those systems. It does not seem likely that there is an absolute answer to significant questions of unemployment and underemployment, to professional development in an age of retrenchment, or to a series of other problems. These are issues which faculty, administrators, professional organizations, must continue to address with seriousness and urgency.

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